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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 9

Application Number: 10/056,712
Filing Date: January 28, 2002
Appellant(s): PERENA, MAX C.

Richard L. Huff
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10/16.03.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1 and 5, 2, 3, 4 and 6 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

| | | |
|-----------|----------|---------|
| 5,165,123 | COLPRON | 11-1992 |
| 5,224,721 | SANTMANN | 07-1993 |
| 5,333,333 | MAH | 8-1994 |

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1 and 4-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mah (5,333,333).

Mah discloses an ambulatory device comprising a U-shaped frame (the base frame shown in Figure 1 to which the wheels are attached) having a closed rear end (the bottom part of the "U" is "closed" by the bar between the rear wheels), two sides (Figure 1), and an open front end (Figure 1), two small front wheels (Figure 1), two large rear wheels (Figure 1), a seat (38) attached to the rear of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), and a support system (34) attached to the rear end of the U-shaped frame (through vertical supports indicated by reference numeral 32 in Figure 1), which support system comprises a support frame having a vertical section and a horizontal section (shown in Figure 1), a body halter having straps (Figures 19, 23 and 25-28 show various types of body halters with straps - i.e., the vertically disposed lines connected to the body halter 170, Figure 19 or 214, Figures 25-28), which straps are connected by connectors to a swivel bar (44 or 216),

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which swivel bar is connected to a support bar (146 - Figure 7), and which support bar is connected via control connectors (120, 144) through a pulley system (138, 140, figures 17 and 18) to a winch (90) on the vertical section of the support frame (see Figure 6), wherein the two sides contain hand rails (inasmuch as there are handrails which are attached through the vertical supports indicated by reference numeral 32 in Figure 1 and on the seat, as shown, the two sides 'contain' handrails), wherein the vertical section of the support frame contains a height-adjusting mechanism (shown in Figure 12 as fastener bolts 76 and holes 78 and described in column 4, line 57 to column 5, line 2).

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Jones (4,973,044).

Mah discloses all of Applicant's claimed invention except for an electronic scale above the winch and connected to the support bar by control connectors. Jones discloses an electronic scale (column 3, line 68 to column 4, line 4) above the winch (the scale of Jones, if combined with the winch of Mah would necessarily be located above it in order to perform it's function, e.g. to measure the weight of the user the scale would have to be displaced between the user and the winch and comparing Figure 2 of Mah with Figure 1 of Jones there would be no other possible place to put the scale other than above the winch of Mah) and connected to the support bar through control connectors (since the electronic scale of Jones includes a load cell for measuring weight, this is by some means connected to the support bar above the person, 62, and therefore connected by control connectors to the support bar) in order to indicate the

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amount or percentage of the patient's weight the patient is to bear during a physical therapy session (column 4, lines 8-10). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide an electronic scale located above the winch on the Mah device and connected to the support bar of Mah by control connectors, as taught by Jones in order to indicate the amount or percentage of the patient's weight the patient is to bear during a physical therapy session.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Colpron (5,165,123).

Mah discloses all of Applicant's claimed invention except for hand grasps on the rear wheels. Colpron discloses an ambulatory device including large rear wheels with hand grasps (best seen in Figure 2) in order to permit the rider to self-propel the device (an inherent and well-known advantage of hand-grasps on self-propelled wheelchair devices). It would have been obvious to one of ordinary skill in the art at the time of the invention to provide large rear wheels with hand grasps on the Mah device, as taught by Colpron, in order to permit the rider to self-propel the device.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mah in view of Santmann (5,224,721).

Mah discloses all of the claimed invention except that the seat is foldable. Santmann discloses an ambulatory device including a foldable seat (88) in order to provide a means for the user to rest that may be raised as desired (column 1, lines 12-18 and 21-27). It would have been obvious to one of ordinary skill in the art at the time

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of the invention to provide a foldable seat on the Mah device as taught by Santmann in order to provide a means for the user to rest that may be raised as desired.

(11) Response to Argument

Regarding the rejection of claims 1 and 5, Applicant argues on pages 4-5 that the Mah reference does not show straps. Inasmuch as Applicant has used the definition strap to mean "a narrow, usually flat strip or thong of a flexible material and especially leather...", the Mah reference most definitely does show straps in at least Figures 19, 23 and 25-28. The 102 rejection above is believed to clearly point this out.

Applicant next argues on page 5 that the shackle, 146, of Figure 7 of Mah cannot be used to meet the support bar limitation. This argument is completely unpersuasive. Applicant has said that the definition of a "bar" includes "a...rigid piece (as of wood or metal) longer than it is wide that is used as a handle or support". The 'shackle', 146, in Figure 7 meets this to the extent that Applicant has broadly recited "a support bar".

Applicant also argued in the paragraph bridging pages 4 and 5 that the Figures 19 and 25-28 of Mah do not show a body harness. Column 7, lines 1-2 clearly refer to a body harness, 170. A body harness and a body halter are identical.

Regarding the rejection of claim 2, Applicant argues on pages 2-10 that there is no teaching in the Jones reference to locate the scale above the winch. Jones teaches an electronic scale and was not relied on for the teaching of a winch. If the electronic scale feature of Jones were added to the Mah device there is no choice (as explained above) but to locate it above the winch (90). Any other location would prevent the

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electronic scale from performing its function because it must necessarily measure the load weight of the cable wound around the winch.

Regarding the rejection of claim 3, Applicant argues on pages 10-12 that there would be no motivation to have large rear wheels with hand grasps on the Mah device. This argument contradicts perhaps one of the oldest features of wheelchairs, e.g., that they can both be self-propelled (through hand grasps on larger rear wheels) and propelled by an assistant (through handles on the rear of the device), as is abundantly clear from a mere cursory glance at Figure 1 of Colpron.

Regarding the rejection of claim 4, Applicant argues on pages 12-13 that the two sides of Mah do not contain handrails. Inasmuch as there are handrails either directly attached to the two vertical supports (32) which are part of the two sides of the Mah device or attached as armrests on the seat (as shown in Figure 1), Mah meets the overly broad limitation that the two sides "contain" handrails.

Regarding the rejection of claim 6, Applicant argues on pages 13-15 that there is no suggestion to combine the references (page 22), the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation to combine can be found in the supporting

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references themselves as is spelled out for Applicant in the above 103 rejection motivational statements, i.e., to provide a resting means that can be raised and lowered.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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